THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.4827 of 2002

ORAL ORDER:

This writ petition is filed seeking Writ of Certiorari to call for the records of the third respondent in Rc.No.3377/92-C dated 22.7.1993 as confirmed by the A.P. Cooperative Tribunal, Vijayawada in O.A.No.127 of 1994 dated 22.12.2001 and quash same as arbitrary and illegal.

The petitioner was the member of the second respondent Bank. It appears that for construction of godown for the purpose of the society, petitioner was nominally made to submit a tender with Engineering Wing of APCOB. The tender was accepted and the work was allotted in the name of petitioner. The Bank with an intention that any outsider may not construct the godown properly did this. The construction was completed and the same was handed over to the Bank on 19.3.1986. Though the Bank spent all the monies for construction, but petitioner's name was shown in the records. The amounts were received in the name of petitioner from the apex Bank and were credited to the second respondent Bank. The said process was objected in the audit report and based on the said audit report, surcharge proceedings were initiated against the petitioner and the third respondent-surcharge authority concluded the surcharge proceedings on 22.7.1993 holding that the petitioner was not able to offer any satisfactory explanation, nor has rendered any accounts for the amount due to the society and thus, he is liable to pay a sum of Rs.83,879-65 ps. Aggrieved by the same, petitioner carried the matter in appeal before the A.P. Cooperative Tribunal, Vijayawada vide O.A.NO. 127 of 1994 and the said appeal was dismissed by order dated 2212.2001. Aggrieved by the same, the present writ petition is filed.

There is no necessity of going into all the details. It is suffice to notice the order passed by the surcharge authority under Section 60(1) of the A.P. Cooperative Societies Act, 1964, which reads as under:

> "It was pointed out in the Final Audit Reports 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, and 1990-91 that the President of the Tadikonda Cooperative Rural Bank Ltd., No.I 1991, Sri Peddi Venkateswara Rao is due to the society an amount of Rs.83,879-65 ps. In the reference 1st read above, Sri Peddi Venkateswara Rao, President of the Tadikonda Cooperative Rural Bank Ltd., was issued a notice under Section 60 of the A.P.C.S. Act, 1964 to show cause why a surcharge order under Section 60 of the A.P.C.S. Act of 1964 should not be passed against him for the amount due from him to the society; as the President has neither remitted the amount due to the society nor has rendered any accounts to the society.
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> In the reference 2nd read above, Sri Peddi Venkateswara Rao was not able to offer a satisfactory explanation nor has rendered any accounts for the amount due to the society. Sri Peddi Venkateswara Rao, President of the society was not able to furnish any accounts for Rs.83,879-65 ps. due by him to the society.
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> ORDER:
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> Sri Peddi Venkateswara Rao, President of the Tadikonda Cooperative Rural Bank Ltd., is hereby ordered under Section 60(1) of the A.P.C.S. Act, 1964 to remit back the amount of Rs.83,879-65 ps. with interest at the rate of 18% per annum till the date of realization."

From the above, it appears that what exactly the evidence that was collected and what exactly is the final audit report submitted by the Auditor, which is the basis for coming to such conclusions were not recorded. Further, the learned counsel for petitioner asserted that neither the petitioner was furnished with any audit report nor the further audit report submitted during the pendency of surcharge proceedings was taken into consideration and thus, the surcharge authority has come to erroneous conclusions. The appellate authority also dismissed the appeal holding that after receipt of surcharge

proceedings, the petitioner herein did not furnish any accounts for the amounts received by him and since he failed to render proper accounts, the surcharge authority rightly passed the proceedings dated 22.7.1993, and except this, no other details were discussed.

It appears the bone of contention of the petitioner is that he was only a name lender for the purpose of constructing godown of good quality. He was a member of the society, money was drawn in his name, but the same was spent by the Bank officials and other members of the society. The petitioner is nothing to do with the contract or money sanctioned by the apex Bank. May be, some audit was conducted mechanically without noticing the fact that the petitioner was only a name lender and the entire contract work was done by the Bank itself. Apart from this, as noticed above, neither the surcharge authority, nor the appellate authority has discussed the basis on which the petitioner is liable to pay amounts purported to be not accounted under the said contract.

For all the above reasons, I am of the opinion that the order passed by the third respondent-surcharge authority under Section 60(1) of the A.P. Cooperative Societies Act, 1964 dated 22.7.1993 as well as the order passed by the A.P. Cooperative Tribunal, Vijayawada in O.A.NO.127 of 1994 dated 22.12.2001 are liable to be set aside and are accordingly set aside. The matter is remitted back to the third respondent-surcharge authority for re-consideration of the entire issue after putting the petitioner on notice and hearing him in this regard.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU,
J

Date: 3.11.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.4827 of 2002

3.11.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.4827 of 2002

Date: 3rd November, 2006

Between:

Peddi Venkateswara Rao

.. Petitioner

And

The Cooperative Sub-Registrar-cum-
Sale Officer, G.D.C.C. Bank, Guntur & 2 others.

.. Respondents